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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDRE PARKER,

Defendant.

CASE NO. 2:20-CR-00033-TLN

STIPULATION CONTINUING STATUS
CONFERENCE; STIPULATION REGARDING
EXCLUDABLE TIME PERIODS UNDER SPEEDY
TRIAL ACT; FINDINGS AND ORDER

DATE: November 19, 2020
TIME: 9:30 a.m.
COURT: Hon. Troy L. Nunley

This case is set for a status conference on November 19, 2020. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice,” and allows district judges to exercise their discretion to continue all criminal matters on a case-by-case basis. This and previous General Orders were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally

1 or in writing”).

2 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
3 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
4 justice continuances are excludable only if “the judge granted such continuance on the basis of his
5 findings that the ends of justice served by taking such action outweigh the best interest of the public and
6 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
7 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
8 the ends of justice served by the granting of such continuance outweigh the best interests of the public
9 and the defendant in a speedy trial.” *Id.*

10 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
11 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
12 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
13 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
14 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
15 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767–68; *see also United*
16 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
17 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
18 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.
19 In light of the societal context created by the foregoing, this Court should consider the following case-
20 specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice
21 exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date for the
22 status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial
23 continuance must be “specifically limited in time”).

24 STIPULATION

25 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
26 through defendant’s counsel of record, hereby stipulate as follows:

27 ¹ The parties note that General Order 612 acknowledges that a district judge may make
28 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 1. By previous order, this matter was set for a status conference on November 19, 2020.

2 2. By this stipulation, defendant now moves to continue the status conference until January
3 14, 2021, at 9:30 a.m. Moreover, defendant separately moves to exclude time between November 19,
4 2020, and January 14, 2021, under 18 U.S.C. § 3161(h)(7) and Local Code T4.

5 3. Regarding this Local Code T4 motion, the parties agree and stipulate, and request that the
6 Court find the following:

7 a) The government has represented that the discovery associated with this case
8 includes police reports, documents related to the defendant's criminal history, and other paper
9 discovery. The discovery in this case also includes several video and audio files related to the
10 defendant's arrest, including body camera footage from each of the responding police officers.
11 All of this discovery has been produced to defendant's counsel.

12 b) Defense counsel desires additional time to review the discovery, conduct
13 additional research into this case, discuss the case with his client, and otherwise prepare the
14 defendant's defense in this matter. Specifically, defense counsel has proffered that he has
15 engaged an investigator to conduct a "deep dive" into the defendant's background, including
16 seeking and obtaining medical reports, reports related to defendant's mental health, and other
17 documents and information necessary to defendant's case. This "deep dive" investigation is still
18 ongoing, and defense counsel requests additional time to complete that investigation and review
19 documents uncovered as part of that investigation.

20 c) Counsel for defendant believes that failure to grant the above-requested
21 continuance would deny him the reasonable time necessary for effective preparation, taking into
22 account the exercise of due diligence.

23 d) The government does not object to the continuance.

24 e) Finally, in addition to the general public-health concerns cited by, among other
25 documents, General Order Nos. 611, 612, 617, and 618, and presented by the evolving COVID-
26 19 pandemic, an ends-of-justice delay is particularly apt in this case because counsel and their
27 support staff have been encouraged to telework and minimize personal contact with non-family
28 members to the greatest extent possible, and—consistent with that public-health guidance—it has

1 been difficult for defense counsel and/or his investigator to adequately investigate the factual
2 circumstances underlying defendant's case.

3 f) Based on the above-stated findings, the ends of justice served by continuing the
4 case as requested outweigh the interest of the public and the defendant in a trial within the
5 original date prescribed by the Speedy Trial Act.

6 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
7 et seq., within which trial must commence, the time period of November 19, 2020 to January 14,
8 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
9 T4] because it results from a continuance granted by the Court at defendant's request on the basis
10 of the Court's finding that the ends of justice served by taking such action outweigh the best
11 interest of the public and the defendant in a speedy trial.

12 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
13 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
14 must commence.

15 IT IS SO STIPULATED.

16 Dated: November 12, 2020

17 MCGREGOR W. SCOTT
United States Attorney

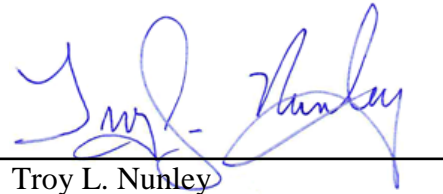
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19 /s/ AARON D. PENNEKAMP
AARON D. PENNEKAMP
Assistant United States Attorney

20
21 Dated: November 12, 2020

22 /s/ TIMOTHY ZINDEL
TIMOTHY ZINDEL
Counsel for Defendant
23 ANDRE PARKER
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FINDINGS AND ORDER

IT IS SO FOUND AND ORDERED this 12th day of November, 2020.



Troy L. Nunley
United States District Judge